

**Commission on Child Support
Meeting Minutes**

Wednesday, October 27, 2021

1:00 p.m. - 5 00 p.m. MDT

**Lecture Hall, Room 112, Black Hills State University, First Floor (Use North Entrance)
4300 Cheyenne Blvd.,
Rapid City, SD 57703**

Join Zoom Meeting

<https://state-sd.zoom.us/j/94635948056?pwd=eTZ2aFR1YWtRdDhGbis4RkhDYVM0QT09>

Meeting ID: 946 3594 8056

Passcode: 487552

Commission Members Present: Chairman Justice Scott Myren; Virgena Wieseler, Department of Social Services (DSS) Chief of Children and Family Services; and Terri Williams, Child Support Referee. The following members participated via Zoom: Representative Mike Stevens; Senator Arthur Rusch; Lindsey Riter-Rapp, South Dakota State Bar; Amber Kinney, Custodial Parent; and Rob Simmermon, Non-Custodial Parent.

Commission Members Absent: None

Others Present: Carmin Dean, Nichole Brooks, Marilyn Kinsman, and Kristen Campbell, Department of Social Services (DSS) support staff; Suzanne Starr, Unified Judicial System (UJS); Jeremy Lippert, DSS Director of Legal Services (via Zoom); and Dr. Jane Venohr, Center for Policy Research (via Zoom). Jessie Drury was present to provide testimony. Jessica Steidl provided testimony via Zoom.

Call to Order: Chairman Justice Myren called the meeting to order at 1:02 PM MDT. Commission members were welcomed and introductions of Commission members and onsite attendees were made and a quorum was determined.

Approval of October 27, 2021 Agenda: A motion was made by Terri Williams to approve the October 27, 2021 agenda. Seconded by Virgena Wieseler. Motion carried.

Approval of September 30, 2021 Meeting Minutes: A motion was made by Terri Williams to approve the September 30, 2021 meeting minutes. Seconded by Representative Stevens. Motion carried.

Approval of September 30, 2021 Public Hearing Minutes: A motion was made by Lindsey Riter-Rapp to approve the September 30, 2021 public hearing minutes. Seconded by Rob Simmermon. Motion carried.

Medical Support SDCL 25-7-6.16: Nichole Brooks presented information regarding Medical Support and cited federal regulations and state administrative rules that pertain to medical support. When establishing a child support order, the state must address how a child's health care needs will be met and the coverage must be considered as accessible and reasonable in cost. For example, if the insurance plan is valid in South Dakota, but the child resides in Florida, the insurance coverage is not considered accessible to the child. Suppose the cost attributable to the child is equal to or less than 8% of the parent's net income, after the proportionate medical support credit is applied, and the amount is specified in the child support order. In that case, the

insurance is considered to be reasonable in cost. The child support order must specify the amount and South Dakota statutes show how to apply costs. The Division of Child Support (DCS) enforces medical support. In situations where DCS is not aware of insurance coverage being provided for a child of a noncustodial parent, and the noncustodial parent has been court ordered to provide insurance, a National Medical Support Notice (NMSN) is issued to the employer of the noncustodial parent for consideration of adding the child to the noncustodial parent's insurance policy. In situations where an employer does not offer insurance to any employee, or the noncustodial parent may be a part-time or seasonal employee not eligible for insurance, or the noncustodial parent may no longer be employed, or the cost of insurance may exceed either the 50% withholding limitation or the 8% cost limitation, the child would not be enrolled in the noncustodial parent's insurance policy. The employer would complete and return the form to DCS indicating why enrollment did not occur and the custodial parent would be notified that enrollment did not occur. If the noncustodial parent is subject to a waiting period, e.g., 90-day probationary period, the employer will complete and return the form to DCS noting the effective date of the policy. If the noncustodial parent is still employed as of the effective date, another NMSN is sent to the employer. The issuance of the NMSN is a qualifying family status event that is not subject to open enrollment restrictions. When insurance is available and coverage is provided for the child through a noncustodial parent, the employer completes and submits a verification of insurance form to DCS to place information on the computer system, apply the medical support credit, and notify the custodial parent of information. If the cost exceeds the limitations provided in the child support order, the noncustodial parent would not be required to enroll the child in the plan. However, either the noncustodial parent or the custodial parent could voluntarily exceed their 8% cost limitation to secure coverage. The 8% amount shown in the child support order is the most the individual will be responsible to pay for insurance. When insurance is available but the child is not covered, if the cost for the insurance exceeds the 8% limitation of either party, or would exceed 50% of withholding, the noncustodial parent is not required to enroll the child in the insurance plan. Either party may voluntarily exceed the 8% limitation, but the other parent will only be responsible for reimbursement up to 8% of their reasonable cost limitation. Nichole provided an example of how to calculate the 8% limitation. When enrollment takes place, the employer completes and submits a medical insurance verification form to DCS to place information on the computer system, apply the medical support credit to the case, and notify the custodial parent of insurance coverage.

- **Consideration:** Federal regulations allow states to consider the full cost of the insurance plan. Currently only the child's portion of the family costs are included; the difference between self-coverage and family coverage excluding the parent's; single coverage is the parent's responsibility to pay. Take the difference between single and family coverage costs and divide that by the number of individuals covered, excluding the parent, to arrive at the amount for each individual having the benefit of the insurance. The Commission can choose to leave the statute as it currently is or modify the statute to include the full cost, to the parent, which results in the child having coverage.
- **Consideration:** Per public input received, when there is no insurance premium differential between additional children and the individual covered, the court should consider the difference between single rate and family rate. When someone has four children enrolled on the insurance plan, and it costs the same whether covering one child or four children, if all four children are children of both parties, the court should consider the entire premium, not just the amount for covering two children, even when two of the four children are emancipated. See *Examples of How Reasonable Cost Can be Calculated*.

Representative Stevens asked what the philosophy to make a change is; is it to include the kids up to age 26? Nichole responded that the Commission needs to decide to either keep the current law as it is, or consider the parent's full cost of the insurance plan. There are several situations to

consider when deciding whether to utilize family costs, expending to provide insurance for the child, e.g., maybe the individual cannot afford insurance through their employer; if the child is to be enrolled, the individual also needs single coverage for themselves; several individuals are just below the 50% limitation; costs may be reasonable, but the 50% limitation is affected. The Commission should also consider public input received requiring the reimbursing parent to pay for emancipated children, and dividing the cost by the number of joint children covered. Representative Stevens asked if it is more equitable to look at the full cost; that is correct.

Terri Williams stated as a child support referee, she has taken the position to calculate according to statute and calculates costs proportionately per child if coverage is available, and doesn't stop at 8%. Nichole stated if individuals are requesting a modification, and insurance is available at work, the child support referee should do calculations and determine if costs are reasonable. If determined to not be reasonable in cost, the noncustodial parent may still be required to provide the insurance; however, enforcement will not occur if the cost exceeds the 8% limitation as DCS cannot require an individual to pay more than their reasonable cost limitation. If the calculation is over the 8% limitation, it would be deemed as unreasonable in cost under the statute to protect all the parties. For example, DCS would not allow 72% of their income to go towards health insurance; it would be considered as being unreasonable in cost.

Representative Stevens asked if it is more likely there will be insurance if the full cost is used. Nichole explained that typically, it is in the lower income areas that would be impacted where costs are determined to be unreasonable.

Terri Williams posed a situation of a custodial parent providing insurance paying \$1,000 per month for a family plan. The noncustodial parent earns 25% of what the custodial parent earns. The credit cannot exceed 8% of the noncustodial parent's income; only 8% can be used in the credit calculation? Correct. Nichole explained that the current statute for medical insurance states that the cost shall be proportioned on the basis of income. The parent shall be reimbursed or receive a credit, whichever is appropriate. Federal law requires states to determine what is reasonable and accessible. If the insurance costs exceed 8% of the noncustodial parent's income, then credit can only be applied using up to that limitation amount. The federal government recommended 5% of gross income for determining reasonable in cost. South Dakota translated the recommended gross calculation to 8% net instead; since the state guidelines are based off of net income.

Chairman Justice Myren looked for consensus of members, noting that after all public comments are received and heard, the Commission will vote.

Rob Simmermon stated he is of the opinion that the full amount of the insurance cost for the entire family should be used. Lindsay Riter-Rapp asked if this has always been the law. Virgena Wieseler shared this change resulted under the new federal regulations in 2016; however, it was not finalized in time to address during that legislative session. The 2021 Commission on Child Support is the first Commission to address this and will need to determine if the full cost should be realized, or if the difference between self only and family coverage would be a more viable option.

Chairman Justice Myren shared that if the Commission were to adopt alternatives and cover the full cost of the insurance, it may exclude some children at the lower income levels; but, at the higher income levels, the noncustodial or custodial parent (person paying the premium) may get a higher level of reimbursement for insurance actually paid for.

Representative Stevens asked if the Commission decided on utilizing full cost, is it necessary to go with a credit for children up to age 26? Nichole responded it is a separate issue. That discussion was a result of public input; not a federal requirement. Chairman Justice Myren stated the options are to leave the law as it is; recover costs attributed to a child; utilize full costs of insurance; utilize full cost of insurance plan plus divide costs for all children responsible for.

- **Consideration:** The Commission will need to make a decision on whether a person paying for the insurance is responsible for continuing to pay for an emancipated child.

Second Job Income SDCL 25-7-6.22: Nichole Brooks presented information about second job income and the codified law ([SDCL 25-7-6.22](#)) for a rebuttable presumption that second job income not be considered in establishing support obligations. The 2004, 2008, and 2016 Commission's all addressed second job income which resulted in the statute as it reads today. Refer to *Second Job Income* handout.

Nichole asked if the Commission wants to continue as is with this statute, or if changes are needed. Rob Simmermon proposed to leave it as is. Terri Williams stated that a referee listens to both parties and candidly makes a decision based upon information that is provided. If the noncustodial parent obtains the second job after the initial order, she does not include that income. There is more of a lack of uniformity if someone is working a full time job and earning overtime pay and determining that person's overtime pay in gross income, e.g., someone who earns National Guard pay, retirement, disability, etc., his/her income is included; for a person in a second job, his/her income is excluded. Overtime vs a second job is treated differently. Rob Simmermon stated he misunderstood and stated that portion should be clarified in statute; secondary income should be included if they had it when they were intact.

Terri stated the first job meets full-time employment, and the second job excludes income. For example, an employee at Ford Motors is working 40 hours work week and is offered 20 additional hours to make more income; under current law, the extra hours are considered income. That person does not get the same benefit as the person with a second income job. Sources of income are found in [SDCL 25-7-6.3](#). See (1) *Compensation paid to an employee for personal services, whether salary, wages, commissions, bonus, or otherwise designated*.

Representative Stevens stated he does not think people should be penalized for working an extra job or making overtime and suggested to take overtime out of statute, too. Rob Simmermon proposed that if the person was working a second job when they were together prior to the divorce, it should be counted. Senator Rusch was in agreement stating if the individual was working two jobs when the unit was intact, the children were used to that standard of living. Why should the children be penalized? Representative Stevens stated people [with a second job at the time of a divorce] would be prevented from ever quitting a second job as a result of that.

Virgena Wieseler asked if there was consensus to not change [SDCL 25-7-6.22](#), *rebuttable presumption that second job income not be considered in establishing support obligation* or if there should be possible revisions based on information Terri brought forward.

Terri Williams stated she would like to see where rebuttable presumption is defined, and go back to the 2008 Commission's language. Virgena Wieseler asked Representative Stevens why the change occurred in 2016 to not consider a parent's second job income. Representative Stevens explained that Senator Johns brought it forward in 2016. The issue was that when the second job is included, it means you cannot quit your second job. When divorced, there are arguments that you could purposely include income, and therefore they could count the income whether the parent was still working the second job or not. The parent with second income would never be

able to quit the second job. Terri Williams acknowledged appreciation of the explanation and stated it is a good reason to leave the statute as it currently is.

Rob Simmermon asked about rebuttable presumption. Chairman Justice Myren stated it appears the child support referees are using an ad hoc basis for what to do for second income. A referee, depending on what they think rebuts the presumption, is what controls that case. One referee may see it very different than another referee. Rob Simmermon suggested it was subjective then. Terri Williams stated it is subjective. Terri Williams stated there may be a substantial difference of income comparison of parents, a one size fits all should never be used to meet the goal for meeting the needs of children. Terri stated she understood where Representative Stevens is coming from. The best interest of the child should be considered, which goes back to the reason for vagueness for each situation.

Representative Stevens stated he is OK with leaving the statute as it is. He would like to get something meaningful passed, and is concerned because this is such a big issue and there are so many intricate parts. This may be more of a summer study issue, than a commission issue.

Chairman Justice Myren asked if there is consensus to leave with no changes to the statutes or make changes as Terri proposed, or summer study. Terri Williams stated she feels for the person that argues overtime vs second job income as they are treated differently, and struggles with whether to change or allow the fact finder of the support order to have the ability to find ways to include or exclude income per [SDCL 25-7-6.3](#). There was consensus of the Commission to leave the statute as is.

Decisions to Be Made: Chairman Justice Myren stated there are decisions to be made by the Commission regarding child support guidelines. Decisions and voting will not be made until all meetings and public hearings and comments are received; however, Chairman Justice Myren would like to get a sense of the direction the Commission is leading towards.

- **Guidelines:**

- **Self-Support Reserve:** Chairman Justice Myren asked if the Commission members thought the self-support reserve amount should be increased from \$871 as determined in 2016, or updated to \$1,073, the 2021 federal poverty guidelines, difference of \$202. Terri Williams stated she is in favor of \$1,073. Virgena Wieseler stated she thinks the self-support reserve should increase with the cost of inflation, e.g., housing and food costs. There needs to be a higher self-support reserve to support inflation. Lindsay Riter-Rapp and Rob Simmermon acknowledged agreement.
 - Consensus of the Commission was reached to move to \$1,073. The ultimate vote will be later.
- **Minimum Order Amount:** Chairman Justice Myren asked what the minimum order should be? There had been discussion about leaving the current amount at \$79, or changing it to some other amount, e.g., \$50 or even \$0. Chairman Justice Myren entertained a discussion regarding the minimum order amount. Terri Williams asked if Dr. Venohr made a recommendation on this. Dr. Venohr stated the question has to do with individuals who are incarcerated, unless the Commission opts to go with \$0 for incarceration. The recommendation is to go to \$50 (2021). The current South Dakota ,minimum order [\$79] is higher than most states. A \$50 order is more common than a \$79 order. Terri questioned comparisons as noted on the side-by-side comparison chart from August 19 that was included in the August 26 meeting materials. Dr. Venohr referred to the September 22 member, pages 6 & 7 which shows optional self-support reserves and minimum order amounts. Nichole Brooks stated by increasing the self-support reserve to \$1,073 it would actually keep the lower minimum orders longer as you move up the wage scale. Dr.

Venohr suggested Options C & D make the most sense for South Dakota. Chairman Justice Myren proposed a \$50 minimum order. Terri Williams stated she is not opposed to a \$50 minimum order if it can be correlated to incarcerated persons and asked if there is concern for use of Supplemental Security Income (SSI) for other people who might be in that lower bracket. She is OK to leave it at \$79 otherwise. She is not a fan of the reduction; but if it's decided to reduce it, then do so for dealing with incarcerated individuals, not those who are on SSI. Representative Stevens, Rob Simmermon, Lindsey Riter-Rapp are all OK with \$50.

- Consensus of the Commission was reached to reduce to \$50. Ultimate vote will be later.
- **Guideline adjustment / Cap:** Chairman Justice Myren asked if the guideline schedule should be adjusted to 2021 data. He opened for discussion stating if so, should there be a cap to the increase, and if so, what should it be, e.g., 10%, 13%, or something else. He asked if anyone thinks the Commission should not adjust to the 2021 data. No one spoke against moving to 2021 data. Rob Simmermon asked if the guidelines are adjusted, would request for modification fall into this discussion; does it apply to everyone already on support; will there be lots of modifications; how does this change work? Carmin Dean stated she oversees the modification unit that processes modifications and sends them to the courts. In the past, when guidelines changed, DCS expected an influx of petitions for modifications; however, there was only a slight increase, nothing staff could not handle. Other staff are also available if per chance, it is overwhelming with the number of petitions that would come in. Chairman Justice Myren stated he is not hearing an adjustment to 2021 data should not be made. Should a cap be imposed? Rob Simmermon stated in his personal experience, he has never heard anyone say they don't get enough child support, and asked what the reason is for increasing it. Chairman Justice Myren stated the idea is that the change would increase based on financial data. It may or may not change each area. It is a systemic change that may significantly change the amount of child support deemed. He asked if there should be a cap that so it's not a huge, dramatic increase. He reminded members that in 2016, the Legislature imposed its own cap at 4%. Representative Stevens stated the clients he represents say they are not getting enough child support. In 2016, the Commission's findings were presented in the House and legislators thought there was too much of an increase so it was voted down in the House; resurrected in the Senate, and a cap was imposed by the Legislature. The cost of living keeps going up, the guidelines are updated every four years. Now this Commission is looking at an eight-year period of time where we are not catching up to the cost of living; adjustments need to be made. He asked that the Commission take into consideration that if it's decided to look at a 13% increase, it could have the same fate as last time. Lindsay Riter-Rapp stated she concurs with the 2021 levels but there should be a cap given prior legislative efforts. Senator Rusch shared that of the child support cases in his court, the bulk of complaints were about not getting sufficient child support. Rob suggested there should be cap, lower income families need more support; but it seems that higher income parents would pay much more for child support. Virgena asked Dr. Venohr if she could provide variations of the adjustment by 8%, 10%, and 13% to look at those to see what those adjustments would actually be. Dr. Venohr provided some caps in the September memo at 10%, 13% and 15%. At that time, 13% aligned with price increases. Dr. Venohr will provide additional lesser percentages for the members to consider (4%, 6%, 8%). Chairman Justice Myren stated it is appropriate to get in line with economic data and expressed interest in hearing from legislators. Representative Stevens stated he would like to see how 4%, 6%, and 8% break out. Senator Rusch stated percentages will need to be under 10% to carry through the Legislature. Terri Williams opposed a cap. The inflation rate is roughly 14%; if there is a cap of 14% or less, the custodial parent will bear

the brunt of taking care of that cap as the extra inflation would be absorbed by the custodial parent. The areas of the current schedule that has the 4% cap did not get to the 2016 levels, so there is an even bigger increase for 2021. Carmin Dean stated if there are no changes, there will be a large increase eight years later. If caps continue to be put in place, the guidelines will never get to where they need to be with the economic data. Rob Simmermon stated in his personal situation, his kids are supported fine. It would mean a huge increase for him as higher incomes are penalized more. He has worked hard to get to the point where he is at; the more he makes, the more he has to pay. It has nothing to do with the situation he was in when he started. Chairman Justice Myren stated that ideally, there would be no cap at all. The reason to talk about a cap, is from past experience the Legislature will look at it, and may impose their own cap.

- Consensus of the Commission was not reached. Ultimate vote will be later after review of more data (4%, 6%, and 8%) from Dr. Venohr.
- **Incarceration – modify / automatically reduce:** Chairman Justice Myren asked members if an individual is incarcerated, should the child support be automatically adjusted, or should the inmate be responsible to file a petition for modification. Terri Williams asked what DSS believes would work best, automatic reduction or modification. Carmin Dean stated modification would be best as with non-IV-D cases, DCS does not get information for individuals who are incarcerated and would not know how to impose those. DCS could add information, e.g., expected release date, to the petition for modification. Senator Rusch stated there are people incarcerated who will not be responsible enough or understand the necessity for making a modification. Nichole Brooks stated preliminary discussions have been held with the Department of Corrections (DOC) regarding what could be done to facilitate modification requests. She stated DCS staff have a good working relationship with DOC staff, and DCS staff are seen in the prison. DCS could essentially catch the individuals on the DCS caseload where the order is not modified and DOC could get the inmate the information to submit. The inmate could meet with DCS staff and receive help in completing the petition for modification form. DCS can make it easier for inmates to receive and submit the form. Rob Simmermon asked if there are disadvantages to not doing automatic. Representative Stevens stated there are some inmates have assets that can be used for support, and inmates on work release that would have funds. He understands Senator Rusch’s observations, the individual in jail is not very responsible. Representative Stevens stated the presentation given to the Commission in Sioux Falls was excellent, and applications are not hard to complete. He suggested to leave the system as it is. Amber Kinney agreed stating she does not think the Commission should completely make it so the person incarcerated doesn’t have to file any sort of request just because of their circumstance; it should not be automatic. Lindsey Riter-Rapp voiced some concerns with possibly missing some federal inmates, but agreed the process could be more streamlined and simplified for inmates. She acknowledged she is comfortable with the direction the Department is heading and supports the modification process. Rob Simmermon asked if the custodial parent will be notified when the noncustodial parent is released. Carmin Dean stated if the Commission chooses modification, DCS would develop a notice to be sent to both parties and then it would be up to one of them to complete the petition for modification. The application would be updated to include the date of release. Virgena Wieseler agreed with the modification process. Terri Williams agreed with the recommendation of DSS, stating she is in favor of modification and likes the rationale that with non IV-D cases, DCS does not get information for individuals who are incarcerated and would not know how to impose those.
 - Consensus of the Commission was reached to continue with petition for modification; simplify the process for an inmate’s application; and inform the custodial parent when the noncustodial parent is released. Ultimate vote will be later.

- **Draft Revisions to incorporate federal requirements:** Virgena Wieseler and Carmin Dean walked members through the *Statute Revisions – Federal Requirements* draft document.
 - There could be changes under [SDCL 25-7-6.3](#), *Determination of parents' monthly net income—Sources of income*, if the Commission decides to make changes regarding sources of income.
 - Under [SDCL 25-7-6.4](#), *Rebuttal presumption of employment at minimum wage*, the Commission would need to adopt language regarding incarceration for 180 days or more to come into compliance with the new federal regulations.
 - Recommended changes under [SDCL 25-7-6.7](#), *Allowable deductions from monthly gross income*, are as a result of tax changes, with removal of 'with one withholding allowance.'
 - Number 6 under [SDCL 25-7-6.10](#) *Factors considered for deviation from schedule*, will need to be updated to comply with new federal regulations. The incarceration piece will need to be removed. Currently, when a parent becomes incarcerated, it can be considered a voluntarily reduction in income.
 - Either a new statute will need to be drafted (see handout), or [SDCL 25-7-6.10](#), *Factors considered for deviation from schedule* could be amended to comply with 302.56(g). Terri Williams recommended a new statute; referees cannot raise deviations. Terri Williams asked if fact finders are limited to utilizing annual pay standard for minimum wage based on proposed revisions to [SDCL 25-7-6.26](#) *Effect of failure to furnish financial information*. Carmin Dean stated that based on new federal regulations, imputing at annual pay standard can no longer be utilized. The Department of Labor and Regulation publishes a salary schedule for different jobs which can be used to obtain wage information when it is not provided. The federal government wants obligations established on earning level and the ability to pay; the federal government is requiring states to move away from annual standards.
 - No oppositions were heard so consensus of the Commission is assumed. The Department will review the draft *Statute Revisions – Federal Requirements* document with attorneys in the Division of Legal Services and will present another draft to the Commission at the November 18, 2021 meeting in Pierre.

Abatement Subcommittee: Terri Williams led discussion on the report out from the Abatement Subcommittee. The Subcommittee discussed several issues: 1) some referees believe only the court is authorized to grant an abatement, not a referee; 2) discussion surrounding changing the criteria of requiring 10 or more nights in a month before a parent is eligible for abatement; 3) discussion regarding changing the range of percentages allowed for abatements; 4) provide a calculation to ensure everyone is using the abatement calculation correctly and consistently; and 5) address situations where the child support obligation is greater when using the cross-credit vs the abatement. The Subcommittee focused on the fact finder. Virgena Wieseler asked if fact finder should be defined, or if it should state 'court' or 'referee'. Senator Rusch stated it could vary depending on the level of the case. A recommendation is to replace 'court' in [SDCL 25-7-6.14](#) *Abatement of portion of child support—Modification* to 'fact finder' which would allow referees to make the determination of abatement. There is a presumption that parenting time is exercised. If the custodial time is not being exercised, then the noncustodial parent would be required to pay the abated amount to the custodial parent. Based upon comments made in public meetings thus far, the Subcommittee discussed the referee process, and how referees are not all in line with when and how to calculate an abatement, so the group wanted to add how to calculate and utilize the process. See page 2 of handout. Focus should be on the basic child support obligation. If there is health insurance, don't start with that section; use the abatement section only. The Subcommittee also talked about whether to change the abatement percentage and decided to

leave it alone. With these changes, the group is hoping comments the Commission has heard from the public on when to use the abatement and how to use it have been addressed. Senator Rusch stated the Subcommittee borrowed language from Arkansas regarding nonduplicated costs of the noncustodial parent not associated with the child's time. The group also looked at criteria of requiring 10 or more nights in a month before a parent is eligible for abatement and opted to leave the criteria as it is. Representative Stevens stated no one is going to be completely happy; he would like to leave as much of the structure as possible and bring comments forward. He reminded the Commission about the lady who brought forward in public comment that it would be cheaper to give up a child. He wants accountability with abatements. People should show documentation to the referee as to why they should be granted an abatement, and the calculation process should be tightened up to clarify what to include and what not to include. He received information from Representative Pischke that he liked comments received through Tom Keller's public input. Chairman Justice Myren thanked the Abatement Subcommittee for their work and asked if there were questions or opposition of the proposed legislation and opened it up for discussion. The Subcommittee noted in the statute update that if the non-custodial parent does not exercise the extended parenting time during a particular year, the noncustodial parent shall be required to repay the abated amount of child support to the custodial parent. Virgena Wieseler asked Terri Williams how to get the dollars back? Would it need to go to small claims court? Terri stated yes, but this was not something the Subcommittee discussed. Virgena Wieseler asked again about the possible need to define 'fact finder', looking to Representative Stevens and Senator Rusch for response. Senator Rusch stated it could be defined; however, lawyers will know who the fact finder is in cases, it may vary on the level of the case, e.g., for divorce, it's a trial judge; supreme court for others.

- **Discussions:**

- **SDCL 25-7A-22 What is a substantial change in circumstance?** Terri Williams stated most referees look for a change in circumstance; but it may not be a substantial change. There is a process to go through. If it is determined to be a calculation of \$1 or \$2, don't make the adjustment as it would not be considered a substantial change; however, if the calculation is a difference of \$15, it would be considered a substantial change and the adjustment would be made. In another statute, substantial change language was removed. Terri asked Chairman Justice Myren what constitutes a substantial change. Chairman Justice Myren responded that 'substantial' is like 'reasonable'. It's something judges and jury's do regularly. The Commission could choose to define it. Rob Simmermon questioned if there is a second job, is that considered a substantial change? Earlier in discussion, the answer was no, as second income is exempted from the calculation. He questioned if a consistent message is being sent. Terri explained that would be excluded. The process is that a petition for modification is completed and sent to DCS; DCS sends it to the Court to order a referee to be assigned. It is not reviewed at that point in time. The fact finder would determine if the modification is warranted.
- **Side-by-Side Comparison:** Dr. Venohr provided additional data (4%, 6%, and 8%) showing the lower and middle incomes are not affected. See the meeting handout, *Side-by-Side Comparisons of Alternative Caps on Increase* document.
- **SDCL 25-7-6.19 Change of Custody – Credit Towards Arrears:** There was not enough time to address this topic.
- **SDCL 25-7-6.21 Credit on Monthly Support Obligation – Disability, Retirement, Veterans Benefits:** There was not enough time to address this topic.

Public Comment at 4:30pm – 15 minutes for the public to address the Commission: Chairman Justice Myren stated the Commission is allowing a 15 minute public comment period during the meeting, but there is also a public hearing at 6:00 PM.

Jessica Steidl provided testimony via Zoom. Jessica thanked Commission members for their time and energy put into this effort. She stated she is happy about a lot of changes made. Jessica questioned if under-employed and proof of income should be defined. Also, define what it means regarding proof of income for federal tax purposes, e.g., self-employed and schedule C for household expenses and other items. Jessica stated in terms of child support, receipts should need to be provided.

Jessie Drury provided testimony in person. Jessica stated she would like to provide comments as someone who has concerns about how child support is figured and consequences for not paying. Her biggest concern is that child care expenses are not included on how child support is computed, and feels it should be included. Jessica stated when dealing with DSS, [applying for DSS benefits] whether you receive child support or not, DSS assumes you are getting the money even when you are not. There were eight bills brought forward in 2020 for how to figure child support and defining parenting; but it lacked consequences for those not paying child support. Someone did not pay child support for two years; parental rights were terminated. There should have been a hold on his license(s); however, the license(s) was released to him through DSS. DSS cannot share why the license(s) was released, even though he's behind \$10,000 in child support. There ought to be consequences for those who do not pay child support, don't make money, yet drive expensive cars, or those who work under the table. Terri Williams stated what she heard Jessie state was that the order for child support is included in determining income, and if someone is applying for benefits in DSS, that order of child support is included, whether the child support is received or not. Jessie stated, yes. Rob Simmermon asked if that was true. Nichole Brooks stated DCS will need to check into this.

Chairman Justice Myren asked if there were any other people on Zoom who wished to provide testimony. The public is welcome to provide testimony again at the 6:00 public hearing. There is time for additional discussions now as well.

Jessica Steidl returned to provide additional testimony regarding a suggestion for [SDCL 25-7-6.7](#), *Allowable deduction from monthly gross income*. She drives from Mitchell to Huron each day, she did when she was married, too. There is no way to deduct the actual expenses incurred to drive to work every day. For purposes of calculating earnings, could W-2 employees get mileage as a deduction to go to work, e.g., self-employed workers get to deduct mileage. Travel expense would be nice to allow with deductions for monthly gross income. Rob Simmermon asked if federal student loan payments are included in the list of things that can be deducted. Terri Williams referred to [SDCL 25-7-6.7](#), *Allowable deductions from monthly gross income* which includes income taxes, Social Security and Medicare taxes, contributions to an IRS qualified retirement plan, actual business expenses for an employee incurred for the benefit of the employer, payments on other support and maintenance orders, such as child support obligations or abatement orders. Rob stated federal loans should be included in the list. Terri stated there are deviation factors that can be considered by a fact finder to determine if the amount should be deviated. Carmin Dean stated the deviation statute has different deviations and one is that the schedule creates a hardship on the parent. It could be a financial hardship on either parent, the support obligation exceeds 50% of the income, etc. If the referee grants the deviation, it's in the order and DCS tracks which deviation is used; however, DCS does not have the ability to drill down that low. DCS could run reports for the Commission regarding the number of deviations granted. Federal regulations state that if a state uses deviations excessively, they need to look at their established guidelines schedule and adjust it. South Dakota is consistent with income levels. Rob Simmermon asked the Commission to consider that federal student loan payments with proof could be included every time, rather than on an individual case by case basis.

Reminders: Chairman Justice Myren reminded members about the final meeting to be held on Thursday, November 18, 2021 at 1:00 PM CT in Pierre with Zoom and in-person options.

Adjourn / Recess: Meeting adjourned at 4:50 PM MDT. The Commission will recess until 6:00 PM when the Commission reconvenes for the public hearing.

Reconvene / Public Hearing:

Join Zoom Meeting

<https://state-sd.zoom.us/j/97493841985?pwd=UDM2QmM2d1BibTRqMXFpbzRhNFIQdz09>

Meeting ID: 974 9384 1985

Passcode: 470830